UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PARISH OF ST. PAUL'S EPISCOPAL CHURCH, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	**Civil No. 3:05cv1505 (JBA)**
	:	
THE EPISCOPAL DIOCESE OF CONNECTICUT DONATIONS & BEQUESTS FOR CHURCH PURPOSES, INC., et al.,	:	
Defendants.	:	

Ruling on Motions to Dismiss [Docs. ## 28, 46]

This case arises from a struggle within the Episcopal Diocese of Connecticut for control of six Episcopal Church parishes, their money and their real property. Plaintiffs include six parishes (St. Paul's, Bishop Seabury, Christ Church, Christ and The Epiphany, St. John's, and Trinity) and five of their respective pastors, as well as rectors, wardens, vestries and officers. Defendants are the Episcopal Diocese of Connecticut ("Diocese"), the Episcopal Diocese of Connecticut Donations and Bequests for Church Purposes, Inc. ("D&B"), the Missionary Society of the Diocese of Connecticut ("Missionary Society"), The Rt. Rev. Andrew D. Smith, Bishop of Connecticut ("Smith"), The Most Rev. Frank T. Griswold, III ("Griswold"), Presiding Bishop of the Episcopal Church of the United States of America ("ECUSA"), and other individual members of the clergy and certain of their unnamed associates who were allegedly involved in taking control of the contested church property. Connecticut

Attorney General Richard Blumenthal is sued pro forma pursuant to his role as "protector of the public's interest in all property owned by charitable, jural entities in the State of Connecticut...." Compl. [Doc. # 1] at ¶ 19.[1]

Plaintiffs invoke this Court's federal question jurisdiction[2] claiming violation of the First, Fifth and Fourteenth Amendments, id. at ¶ 78 ff., and seeking a declaratory judgment that certain Connecticut statutes providing for the corporate organization of the Episcopal church are unconstitutional, id. ¶ 90.[3] Plaintiffs also assert state law claims for violation of Connecticut's prejudgment remedy statutes, id. at ¶ 81, unfair trade practices, trespass, theft, conversion, and breach of fiduciary duty, id. ¶ 102 ff.

Defendants move to dismiss the complaint under Rule 12(b)(1) for lack of subject matter jurisdiction and under Rule 12(b)(6)

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[1]By permission of the Court, Attorney General Blumenthal has not participated in the briefing on the motions to dismiss. See Scheduling Order [Doc. # 21] (granting Attorney General 30 days from Court's ruling on motions to dismiss to respond to complaint).

[2]See Compl. ¶ 1. Plaintiffs invoke the Court's jurisdiction under 28 U.S.C. § 1331 (federal question), § 1343 (civil rights) and § 1367 (supplemental jurisdiction as to state claims). Contrary to the suggestion in some of their briefing, plaintiffs' complaint does not invoke the Court's diversity jurisdiction under 28 U.S.C. § 1332.

[3]The plaintiffs' claim of violation of constitutional privacy rights, Compl. ¶ 82, has not been briefed and therefore will be deemed abandoned.

for failure to state a claim on which relief may be granted [Docs. ## 28, 46]. For the reasons that follow, the Court finds that no actual case or controversy exists for purposes of plaintiffs' declaratory judgment claim, and that plaintiffs' constitutional claims fail for lack of state action. Having so found, the Court declines to exercise supplemental jurisdiction over the state law claims. Accordingly, the motions to dismiss will be granted.

I. FACTUAL BACKGROUND

The following facts alleged in the complaint will be accepted as true for purposes of deciding the motions to dismiss. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). The origin of the rift between plaintiffs and defendants appears to be related to ECUSA's stance on homosexuality, and specifically on ordination of homosexual priests. See Compl. ¶ 33. The complaint alleges that plaintiffs accept "the traditional theological beliefs and teachings regarding human sexuality and the ordination of priests and deacons," Compl. ¶ 31, whereas defendants stand "firmly in opposition to accepted Anglican theological belief and teaching" regarding these matters, id. at ¶ 32. The six plaintiff parishes sought to leave the oversight of the Presiding Bishop of the Episcopal See of Connecticut, Bishop Smith, requesting instead "delegated pastoral oversight" by another bishop, a plan that Smith allegedly scuttled. Id. at

¶ 34-37.

On March 29, 2005, Smith announced that he was charging the plaintiff priests and each of the six parishes and their wardens, vestries and congregations, with "abandoning the communion of the church." Id. at ¶¶ 38-39. The allegedly false charges were upheld by the Bishop's Standing Committee, with the result that the plaintiff priests were "inhibited" and then "deposed," i.e., removed from their positions and their status as ordained Episcopal clergy, and new priests-in-charge were appointed by Smith. Id. at ¶ 40. Plaintiffs make allegations concerning procedural irregularities in these proceedings, which they believe were conducted in violation of canon law. See id. at ¶¶ 42-44, 46. They argue that the removal of the plaintiff priests was a fraudulent scheme to take possession of the real and personal property of the parishes and to "disburs[e] ... the congregations who disagree with Bishop Smith's theological beliefs." Id. at 45.

Defendants froze the assets in certain investment accounts because the relationship of the parishes to the Diocese was "in question," id. at ¶ 50, though the parties agree that these funds since have been returned. On July 13, 2005, Smith and other defendants allegedly engaged in "seizure of the buildings and grounds and tangible and intangible personal property of St. John's Episcopal Church" in Bristol, Connecticut, id. at ¶ 56, by

entering the offices of the church, taking control of the telephone, intimidating the secretary into opening the computer, and downloading parish financial and other data, id. at ¶ ¶ 57-63. In July or August 2005, Smith dismantled the parish's web site and caused traffic on the site to be diverted to another website. Id. at ¶ 64. Certain defendants also obtained papers from non-party Father Hansen's office. Id. at ¶ 65.

Smith installed defendant Mother McCone as priest-in-charge of St. John's church "without prior notice to, consultation with, or consent of, the Parish Vestry." Id. at ¶ 67. After July 2005, Smith and McCone allegedly changed the locks and prevented certain plaintiffs from entering St. John's church. Id. at ¶ 70.

II. Standards

A. Rule 12(b)(1)

"A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000). In resolving a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), the court may refer to evidence outside the pleadings. Id. Evidence concerning the court's jurisdiction "may be presented by affidavit or otherwise." Kamen v. American Tel. & Tel. Co., 791 F.2d 1006, 1011 (2d Cir. 1986). A plaintiff asserting subject matter jurisdiction has the burden

of proving by a preponderance of the evidence that it exists. Makarova, 201 F.3d at 113; see also Malik v. Meissner, 82 F.3d 560, 562 (2d Cir. 1996) ("The burden of proving jurisdiction is on the party asserting it.").

B. Rule 12(b)(6)

In ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the Court must accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the pleader. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984), Allen v. Westpoint-Pepperell, Inc., 945 F.2d 40, 44 (2d Cir. 1991). To survive the motion, the plaintiff must set forth "'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957), (quoting Fed. R. Civ. P. 8(a)(2)); see also Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002). A "complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley, 355 U.S. at 45-46 (footnote omitted); see also Jahgory v. NY State Dep't of Educ., 131 F.3d 326, 329 (2d Cir. 1997). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery

is very remote and unlikely but that is not the test." Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

III. Discussion

A. Constitutional Claims

As plaintiffs recognize, their claims for violations of their First, Fifth and Fourteenth Amendment rights require them to show that defendants are state actors. United States v. Int'l Bh'd of Teamsters, 941 F.2d 1292, 1295 (2d Cir. 1991) ("Because the United States Constitution regulates only the Government, not private parties, a litigant claiming that his constitutional rights have been violated must first establish that the challenged conduct constitutes 'state action.'"). "State action requires both an alleged constitutional deprivation caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible, and that the party charged with the deprivation must be a person who may fairly be said to be a state actor." Cranley v. Nat'l Life Ins. Co. of Vt., 318 F.3d 105, 111 (2d Cir. 2003) (internal quotations and citations omitted, emphases in original).

The determination whether private conduct is fairly attributed to the state is a "necessarily fact-bound inquiry." Brentwood Academy v. Tenn. Secondary Schl. Athletic Assoc., 531 U.S. 288, 298. "[S]tate action may be found if, though only if,

there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself." Id. at 295.

> A challenged activity by a private entity may be deemed state action when the state exercises coercive power, is entwined in the management or control of the private actor, or provides the private actor with significant encouragement, either overt or covert, or when the private actor operates as a willful participant in joint activity with the State or its agents, is controlled by an agency of the State, has been delegated a public function by the state, or is entwined with governmental policies.

Cranley, 318 F.3d at 112 (citing Brentwood, 531 U.S. at 296) (internal quotations omitted).

The examination of whether a defendant is a state actor "begins by identifying the specific conduct of which the plaintiff complains." Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 51 (1999) (internal quotation marks and citation omitted). In this case, plaintiffs complain that defendants have suppressed their free exercise of religion by inhibiting the plaintiff priests and locking out the wardens, vestries and other dissenting members of the parishes; they also complain that defendants have taken control of property that they allege belongs to them and their parishes rather than to the diocese. They primarily claim that a state action nexus exists because defendants' actions have been "facilitated" by the tax exempt status of the defendants' organizations, and by the limitation of liability provided by the corporate form of the diocesan

organizations (the Diocese of Connecticut, Missionary Society and D&B) under Conn. Gen. Stat. §§ 33-265 and 33-266. Pl. Response [Doc. # 42] at 19-20.

Plaintiffs also argue that the following claims of the complaint establish that defendants are state actors:

> a. Complaint ¶ 73. The use of federal postal service and federal law by one or more of the defendants-movants to divert the mail of St. John's Church Parish, thus invoking governmental action by a federal officer;
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> b. Complaint ¶ 72. The invocation of state and/or federal banking laws and regulations to accomplish the freezing of the St. John's bank account with Farmington Savings Bank;
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> c. Complaint ¶¶ 48-51. The utilization of state and federal securities laws and regulations and a Special Act creating [D&B] to withhold the investment funds of the three plaintiff-Parishes because their relationship to the diocese was in question...
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> d. Complaint ¶ 67. The use of a Special Act creating the Missionary Society and the invocation of Connecticut common law remedies, in lieu of Connecticut's prejudgment statute, to seize St. John's church buildings on July 13, 2005[;]
>
> e. Complaint ¶¶ 63-64. The use of state and federal laws and regulations to change the ownership of the Parish domain name and to deconstruct the St. John's website and divert the website to the diocese.

Pl. Response at 22.

1. State Compulsion Test

There are several ways in which a party may be found to be a state actor. First, under the so-called state compulsion test,

"a State normally can be held responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." Blum v. Yaretsky, 457 U.S. 991, 1004 (1982). "Mere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the State responsible...." Id. Specifically, "a state's permission for a corporation to organize itself in a particular manner is not the delegation of governmental authority." Cranley, 318 F.3d at 112 (citing Gayman v. Principal Fin. Servs., Inc., 311 F.3d 851 (7th Cir. 2002)). For example, in Cranley, the Second Circuit held that a state's permission for a mutual insurance company to demutualize, and the statutorily-prescribed process by which the reorganization was to be accomplished, did not render the defendant insurance company a state actor. Id. at 112-13. Therefore the fact that the State of Connecticut has statutorily provided that several defendant organizations may take a corporate form with limited liability does not transform these organizations into state actors.

A private entity is also not a state actor "where its conduct is not compelled by the state but is merely permitted by state law." Id. (citing Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 164-66 (1978)). For example, in Flagg Brothers, the Supreme Court held that a warehouse company that threatened to sell the

plaintiff's stored goods, as authorized by the state's Uniform Commercial Code, for unpaid storage fees, was not a government actor merely by taking advantage of a procedure permitted by law. Likewise, the fact that defendants' actions in this case as permitted by Conn. Gen. Stat. §§ 33-265-66, which allow the Episcopal Church governance over its parishes consistent with its constitution and internal church canons, does not transmute defendants into state actors.

Furthermore, defendants' use of generally available procedures to change the St. John's Church mailing address, freeze assets in bank accounts, or change the domain name of a website (even assuming that these all of these actions were done pursuant to a law or regulation), cannot support denominating the defendant organizations as state actors. The scope of plaintiff's legal premise is breathtaking -- every person who switched a mailing address, used banking services or altered his or her website address would thereby become a government actor and subject to constitutional restraints under the Fourteenth Amendment. Few people would remain non-state actors. Plainly this was never the intent or purpose of the Fourteenth Amendment.

Plaintiffs do not allege that the State of Connecticut engaged in any actual coercive conduct over D&B, the Missionary Society or the Diocese. Nor can plaintiffs' complaint fairly be read to allege that the Diocesan defendants are controlled by an

agency of the state or were willful participants in joint activity with the State. See Brentwood, 531 U.S. at 296. Therefore the State cannot be held to have provided "such significant encouragement" of the activities of defendants that their acts "must in law be deemed to be that of the State." Blum, 457 U.S. at 1004.

2. Public Function Test

Under the public function test, "the question is whether the function performed has been traditionally the exclusive prerogative of the State." Rendell-Baker v. Kohn, 457 U.S. 830, 842 (1982). Plaintiffs argue that defendant organizations provide a public function via various charitable health and addiction treatment services. Provision of health care services, however, is not an exclusively public function. See Blum, 457 U.S. at 1012 (nursing home held not to be state actor because no finding warranted that "decisions made in the day-to-day administration of a nursing home are the kind of decisions traditionally and exclusively made by the sovereign for and on behalf of the public."); Sykes v. McPhillips, 412 F. Supp. 2d 197, 202-03 (N.D.N.Y. 2006) (holding that hospital and physician who provided emergency medical care to prisoner outside prison and not pursuant to contract with prison were not state actors); Mitchell v. Victoria Home, 377 F. Supp. 2d 361 (S.D.N.Y. 2005) (nursing home not state actor). Furthermore, plaintiffs'

complaint does not implicate defendants' health-related charitable activities, and even if defendant organizations could be said to be state actors in the provision of health care, which the Court does not find, such a conclusion would not compel a finding that they are state actors for purposes of the actions complained of here, namely inhibiting the plaintiff priests, removing the wardens and vestries from office, and excluding the individual plaintiffs from parish property.

3. Symbiotic Relationship Test

Finally, an organization may be a state actor when it is "entwined with governmental policies or when government is entwined in its management or control." Brentwood, 531 U.S. at 296. Plaintiffs allege that the defendant Diocesan organizations are entwined in governmental policies because they have obtained tax-exempt status and are significantly dependent on this status for their financial well-being, but this cannot, as a matter of law, render defendants government actors. "A multitude of organizations maintain a tax-exempt status--churches, institutes, educational foundations, scientific organizations--but none of these has been deemed a state actor based purely on its tax-exempt status." In re Marcano, 288 B.R. 324, 337 (Bankr. S.D.N.Y. 2003); see also Jackson v. Statler Found., 496 F.2d 623,

634 (2d Cir. 1974) ("Statler").[4]

Accepting plaintiffs' allegations that the defendant religious organizations are financially dependent on their tax exempt status, nonetheless plaintiffs do not allege any other factors that would indicate entanglement between the state and the organizations. Plaintiffs do not claim that defendants are subject to a detailed administrative scheme, nor can Conn. Gen. Stat. §§ 33-265 and 266, which merely provide for the establishment of Episcopal corporations, which may hold and transfer property, and subject parishes and ecclesiastical societies to the governance of the Diocese, be said to be such an administrative scheme, in contrast to the extremely complex reporting, oversight and other requirements at issue in Statler, 496 F.3d at 630-32.[5] Plaintiffs do not allege that the state

[4] In Statler, a race discrimination case against several charitable foundations, the Second Circuit found that only "if the defendant foundations are substantially dependent upon their exempt status, ... the regulatory scheme is both detailed and intrusive, ... the foundations do not have a substantial claim of constitutional protection, and ... they serve some public function, then a finding of 'state action' would be appropriate." 496 F.2d at 634 (emphasis added). The Court of Appeals also recognized that there is "a less onerous [state action] test for racial discrimination, and a more rigorous standard for other claims." Id. at 629.

[5] Other provisions of general application in Conn. Gen. Stat. §§ 33-264a - 264l provide for the formation, registration and dissolution of religious voluntary societies and corporations, and permit them to hold and convey property. These minimal provisions cannot be said to be an extensive regulatory system rendering all Connecticut religious corporations state actors.

was a "joint participant" in any of the individual defendants' challenged actions; indeed, the allegations of the complaint make clear that the individual defendants, primarily Bishop Smith, were responsible for all of the challenged decisions, including those affecting the individual plaintiffs' status as priests and/or members of the Connecticut Episcopal Diocese and the disposition of the property at issue.

Accordingly, plaintiffs' allegations are insufficient as a matter of law to make out a claim that any defendant in this case is a "state actor" for purposes of plaintiffs' constitutional claims, and therefore the second count of plaintiffs' complaint, alleging violations of the First, Fifth and Fourteenth Amendments, must be dismissed pursuant to Rule 12(b)(6).

B. Declaratory Judgment

With respect to the declaratory judgment claim, the complaint asserts that the ECUSA, "of which Presiding Bishop Griswold is the recognized leader, is governed by the General Convention of the Episcopal Church and by the Episcopal Church's own constitution ... and canons." Compl. ¶ 22. "ECUSA's legislative body is the General Convention of the Episcopal Church, consisting of the House of Bishops and the House of Deputies..." Id. The Connecticut Diocese "has its own constitution ... and canons..., facially applicable to the diocese and its local parishes ... [and] is a constituent part of

ECUSA, and accedes to, recognizes and adopts the constitution of ECUSA and acknowledges the authority of the Episcopal Church...." Id. at ¶ 23.

Plaintiffs allege that the constitution and canons "are given special legal effect by the State of Connecticut" under Conn. Gen. Stat. §§ 33-265 and 33-266. Section 33-265 reads:

> All ecclesiastical societies in this state, in communion with the Protestant Episcopal Church in the United States of America, shall be known in the law as parishes as well as ecclesiastical societies, and shall have power to receive and hold by gift, grant or purchase all property, real or personal, that has been or may be conveyed to them for maintaining religious worship according to the doctrine, discipline and worship of said church, and for the support of the educational and charitable institutions of the same, and shall have and exercise all the ordinary powers of bodies corporate.

Section 33-266 provides:

> The manner of conducting the parish, the qualifications for membership of the parish and the manner of acquiring and terminating such membership, the number of the officers of the parish, their powers and duties and the manner of their appointment, the time of holding the annual meeting of the parish and the manner of notification thereof and the manner of calling special meetings of the parish shall be such as are provided and prescribed by the constitution, canons and regulations of said Protestant Episcopal Church in this state.

Plaintiffs allege that through these statutes the "State of Connecticut has entangled itself in every aspect of the temporal and certain aspects of the spiritual operations of all the Episcopal Parishes..." Compl. ¶ 25.[6] They further allege that

[6]Connecticut has other similar statutes regarding the structure of the Methodist Church, Augustana Evangelical Lutheran

the application of § 33-265 to churches in "communion with the Protestant Episcopal Church in the United States of America" imposes on churches a legal obligation to remain in communion with ECUSA, in violation of the plaintiff parishes' free exercise rights. Plaintiffs seek a declaratory judgment that Conn. Gen. Stat. §§ 33-265 and 33-266 thus violate the First Amendment's Establishment Clause.

A court may issue a declaratory judgment "[i]n a case of actual controversy within its jurisdiction...." 28 U.S.C. § 2201(a). "'[T]he operation of the Declaratory Judgment Act is procedural only.' Congress enlarged the range of remedies available in the federal courts but did not extend their jurisdiction." Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671 (1950) (quoting Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227, 240 (1937)). "Thus, prior to deciding whether to exercise its discretion and allow a declaratory judgment action to be brought, the court must determine if jurisdiction and venue are proper. There must be an independent basis of jurisdiction, under statutes equally applicable to actions for coercive relief, before a federal court may entertain a declaratory-judgment action." Wright & Miller, Fed. Practice & Procedure § 2766 (2006 update).

Church, Lutheran Church in America, Roman Catholic Church, and United Methodist Church. See Conn. Gen. Stat. §§ 33-268 - 33-281a.

Most fundamentally, "[t]he jurisdiction of federal courts is defined and limited by Article III of the Constitution [and thus] is constitutionally restricted to 'cases' and 'controversies.'" Flast v. Cohen, 392 U.S. 83, 94 (1968). "There are few principles as firmly and as deeply embedded in our jurisprudence as the proposition that federal courts will not issue opinions unless a valid and continuing controversy exists between the litigants. When ... the remedy sought is a mere declaration of law without implications for practical enforcement upon the parties, the case is properly dismissed." Browning Debenture Holders' Comm. v. DASA Corp., 524 F.2d 811, 817 (2d Cir. 1975).

Here, defendants argue that no actual case or controversy exists over the constitutionality of Conn. Gen. Stat. §§ 33-265 and 33-266 because, regardless of the existence of those statutes, the defendants took action under authority of the constitution and canons of the Episcopal Church USA and the Episcopal Diocese of Connecticut, not state statutes, to depose the plaintiff priests and take control of the challenged parish property. The Court agrees.

Although plaintiffs dispute this fact, the Episcopal Church has been held to be a hierarchical religious denomination. See, e.g., Dixon v. Edwards, 290 F.3d 699, 715-16 (4th Cir. 2002) ("The Episcopal Church is hierarchical."); Rector, Wardens & Vestrymen of Trinity-St. Michael's Parish, Inc. v. Episcopal

Church in the Diocese of Conn., 224 Conn. 797, 808, 620 A.2d 1280, 1286 (1993) (same). The church and diocese constitution and canons, incorporated by reference in plaintiffs' complaint, support this conclusion. See Def. Ex. 1 ("Constitution and Canons of the Episcopal Church") ("ECUSA"), Def. Ex. 2 ("Constitution and Canons of the Episcopal Diocese of Connecticut") ("EDCT") [Doc. # 29]. These documents indicate that each Episcopal congregation is organized into a parish, which is governed by a vestry, consisting of the Rector and other lay members elected by the parish membership at their annual meeting. ECUSA Canon I.13, I.14; EDCT Canon I.7. Each parish is part of a regional Diocese, which in turn is governed by an annual Convention or Council, comprised of diocesan and suffragan (assistant) bishops, rectors, other clergy, and lay representatives. ECUSA Canon I.13.2; EDCT Const. Art. II.

All the dioceses together make up the national Episcopal Church, which is governed by a General Convention composed of the bishops, clergy and lay members elected by each diocese at its annual Convention or Council. ECUSA Const. Art. I.1-I.2. The General Convention in turn elects a Presiding Bishop. Id. Art. I.3. The Executive Council of ECUSA's General Convention must approve the constitution and canons adopted by each diocese. Id. Art. V.1.

As relevant here, Article I of the Constitution of the

Diocese of Connecticut provides: "The Diocese of Connecticut, as a constituent part of the body known as the Protestant Episcopal Church in the United States of America, accedes to, recognizes and adopts the General Constitution of that Church, and acknowledges its authority accordingly." See also Compl. ¶ 23 (Conn. Diocese "recognizes and adopts the constitution of ECUSA and acknowledges the authority of the Episcopal Church.") Additionally, the Connecticut Diocese has adopted as binding the national canons governing ecclesiastical discipline for clergy. ECCT Canon IX. As evident by the facts alleged in this case, ECUSA requires all clergy to follow official church doctrine, and prescribes procedures for disciplining priests who, among other offenses, hold and teach "any doctrine contrary to that held by" ECUSA. ECUSA Canon IV.1.1(c).

Finally, as alleged in the complaint, Connecticut law explicitly recognizes the hierarchical nature of the Episcopal Church by providing that "[t]he manner of conducting the parish" and other church affairs "shall be such as are provided and prescribed by the constitution, canons and regulations of said Protestant Episcopal Church in this state." Conn. Gen. Stat. § 33-266.

Taken together, this structure demonstrates that the Episcopal Church is a hierarchical religious organization, and therefore the plaintiff parishes are subject to the governance of

the Diocese and ECUSA on matters of church doctrine and the ownership of church/parish property. Although plaintiffs argue that Conn. Gen. Stat. §§ 33-265 and 33-266 have "facilitated" the defendants' actions complained of in this case, and thereby unconstitutionally established or codified Smith's theology in violation of plaintiffs' rights, the hierarchical organization of the Episcopal Church shows that Bishop Smith did not need these statutes in order to assert his authority over the plaintiff parishes. His authority is inherent in the church's organization. The constitution and canons show that Episcopal parishes generally, as well as those in the Diocese of Connecticut, have bound themselves as part of this hierarchy to follow the church's governing dictates regardless of any state statutes. It is the internal policies and procedures of the church, not the statutes, that plaintiffs actually challenge.

Whether Bishop Smith acted contrary to or outside of the Diocese's own rules is a question of canon law,[7] not a question of the constitutionality of the challenged Connecticut statutes.

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[7]As the Supreme Court has held, within the context of a hierarchical religious organization, "where resolution of ... disputes cannot be made without extensive inquiry by civil courts into religious law and policy, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal...." Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 709 (1976); compare Trinity-St. Michael's Parish, 224 Conn. at 801-03 (state courts may adjudicate church property disputes as long as they avoid "inquiring into and resolving disputed issues of religious doctrine and practice.").

A declaration of unconstitutionality by this Court would not redress plaintiffs' actual grievances: their theological disputes with Bishop Smith over "human sexuality"; their obligation to remain in communion with the ECUSA; the inhibition and deposition of the plaintiff priests and Father Hansen; the appointment of new priests-in-charge; the replacement of the wardens and vestries at the plaintiff parishes; and physical control over the premises at St. John's Church.

As such, there is no justiciable case or controversy regarding the constitutionality of Conn. Gen. Stat. §§ 33-265 and 33-266, and plaintiffs' declaratory judgment count must be dismissed for lack of subject matter jurisdiction.

IV. State Law Claims

Having granted defendants' motions to dismiss both of plaintiffs' federal claims at this initial stage of the litigation, the Court declines pursuant to 28 U.S.C. § 1367(c) to exercise supplemental jurisdiction over plaintiffs' state law claims for violation of Connecticut's prejudgment remedy statutes, CUTPA, trespass, theft, conversion, and breach of fiduciary duty. See Tops Markets, Inc. v. Quality Markets, Inc., 142 F.3d 90, 103 (2d Cir. 1998) ("28 U.S.C. § 1367(c)(3) ... permits a district court, in its discretion, to decline to exercise supplemental jurisdiction over state law claims if it has dismissed all federal claims."). "[W]hen all federal claims

are eliminated in the early stages of litigation, the balance of factors generally favors declining to exercise pendent jurisdiction over remaining state law claims and dismissing them without prejudice." Id. (citing Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 (1988)).

V. Conclusion

Accordingly, defendants' motions to dismiss [Docs. ## 28, 46] are GRANTED as to plaintiffs' declaratory judgment and § 1983 claims, and supplemental jurisdiction is declined as to the state law claims, which are dismissed without prejudice.

IT IS SO ORDERED.

/s/_____
JANET BOND ARTERTON, U.S.D.J.

Dated at New Haven, Connecticut, this 21st day of August, 2006.